IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7206 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHAM VARIETY FOOD PROCESS THR'H RASHMIKANT P VYAS

Versus

STATE OF GUJARAT

Appearance:

MR RM CHHAYA for Petitioner

MR HM BHAGAT for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 27/06/2000

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioner has challenged the order dated 26.7.1999 (Annexure "A") of the Chief Controlling Revenue Authority, Gujarat State, dismissing the petitioner's appeal under Section 32B of the Bombay Stamp Act, 1958 and confirming the order dated 15.3.1999 (Annexure "B") of the Deputy Collector (Stamp Duty Valuation), Valsad.

2. The petitioner purchased the property being land admeasuring 11,772 sq.mtrs. in village Bakhavada in Gandevi Taluka of Navsari District. The consideration mentioned in the sale deed was Rs.1,90,000/- on which the petitioner paid stamp duty of Rs.24,500/-. The Deputy Collector (Stamp Duty Valuation), Valsad issued show cause notice dated 21.11.1998 under Rule 4 of the Stamp Duty Rules to the effect that the consideration mentioned in the document was less than the market value. Hence, the petitioner was given an opportunity to show cause why the higher stamp duty should not be levied.

The petitioner appeared and submitted his reply, a copy whereof is at Annexure "G" to this petition. The petitioner pointed out certain facts and made submissions to show that the consideration mentioned in the document was fair market price and particularly pointed out that although the land admeasured 11,772 sq.mtrs., there were ravines and creek on certain portion of the land and that its geographical location and the conditions imposed in the allotment order dated 3.8.1995 issued in favour of the petitioner were such that the petitioner is not in a position to put up construction on the land exceeding 1300 sq.mtrs. It was accordingly submitted that the fair market value of the land was as reflected in the sale deed and, therefore, the petitioner was not required to pay any additional stamp duty.

The Deputy Collector passed the impugned order dated 15.3.1999 fixing the market price of the land at Rs.4,59,108/- and called upon the petitioner to pay the additional stamp duty at Rs.34,278/- plus penalty of Rs.250/-. Aggrieved by this order, the petitioner preferred an appeal before the Chief Controlling Revenue Authority being appeal No. 52/99. The appeal came to be dismissed by the impugned order dated 26.7.1999. Hence, the present petition.

3. Mr RM Chhaya, learned counsel for the petitioner has submitted that the impugned orders are printed/ cyclostyled orders and do not reflect any application of mind. Apart from not noting the submissions made by the petitioner such as the conditions imposed in the allotment order permitting the construction on only about 10% of the land, reference is also made to para 4 of the appellate order referring to condonation of delay. Mr Chhaya has submitted that the appeal was filed within the time limit and, therefore, the petitioner had not even filed any application for condonation of delay.

4. On the other hand, Mr Bhagat, learned counsel for the respondent authorities has submitted that since respondent Nos. 2 and 3 have given current findings of fact, this petition under Article 226 of the constitution may not be entertained as this Court would not sit in appeal over the decision of the authorities fixing the market value of the land in question.

5. Having heard the learned counsel for the parties, and having perused the relevant orders, this Court is of the view that the authorities have not at all gone through the submissions made by the petitioner in his written reply to the notice as well as in the appeal memo. The impugned orders do not reflect any discussion on merits. The Deputy Collector's order merely states that considering the reply and the location of the land and the land being in rural area, the market value of the land was fixed at Rs.4,59,108. There is no whisper about the objection raised by the petitioner about condition No. 1 in the allotment order that the petitioner is permitted to put up construction on only 1300 sq.mtrs. out of 11,772 sq.mtrs. of land. The impugned order of the Chief Controlling Revenue Authority also suffers from the same vice of no application of mind. On this ground alone, the impugned orders deserve to the quashed and set aside.

6. In the result, the petition is allowed. The impugned order dated 15.3.1999 (Annexure "B") of the Deputy Collector (Stamp Duty Valuation), Valsad and the order dated 26.7.1999 (Annexure "A") of the Chief Controlling Revenue Authority in appeal No. 52/99 are hereby quashed and set aside. The matter is remanded to the Deputy Collector (Stamp Duty Valuation), Valsad for decision after giving the petitioner a reasonable opportunity of being heard. The Deputy Collector shall pass a reasoned order dealing with the contentions which may be raised by or on behalf of the petitioner at the hearing before him.

Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

June 27, 2000 (M.S. Shah, J.)
sundar/-